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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 00-06
DATE REFERRED: 4/28/00
DATE ACTIVATED: 3/5/01

SENSITIVE

STATUTE OF LIMITATIONS: 1/1/00

AUDIT REFERRAL: 01-03
DATE REFERRED: 2/12/01
DATE ACTIVATED: 3/5/01

STATUTE OF LIMITATIONS: 1/1/02

MUR: 4932
DATE COMPLAINT FILED: 10/5/99
DATE OF NOTIFICATION: 10/12/99
DATE ACTIVATED: 3/19/01

STATUTE OF LIMITATIONS: 9/18/04

SOURCES:

AR 00-06 and AR 01-03 -- AUDIT REFERRAL
MUR 4932 -- COMPLAINT GENERATED

COMPLAINANT:

MUR 4932
Mark Brewer, Chair
Michigan Democratic State Central Committee

RESPONDENTS:

ALL MATTERS:
Michigan Republican State Committee and
Robert M. Campau, as treasurer
MUR 4932:
Michigan Chamber of Commerce
Ameritech

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1041-904-40-32

Consumer Energy Company
Kmart Corporation
Blue Cross Blue Shield of Michigan
AT & T Corporation
Jackson National Life Insurance Company

RELEVANT STATUTES/REGULATIONS:

2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)
2 U.S.C. § 431(11)
2 U.S.C. § 437g(a)(5)(B)
2 U.S.C. § 437g(a)(6)(C)
2 U.S.C. § 437g(d)(1)
2 U.S.C. § 441a(d)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
2 U.S.C. § 441d
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 100.8
11 C.F.R. § 100.8(a)
11 C.F.R. § 100.8(b)(16)
11 C.F.R. § 100.8(b)(18)(i)
11 C.F.R. § 100.8(b)(18)(v)
11 C.F.R. § 100.17
11 C.F.R. § 102.5(a)(1)
11 C.F.R. § 102.5(a)(1)(i)
11 C.F.R. § 104.10(b)(4)
11 C.F.R. § 106.1(a)(1)
11 C.F.R. § 106.5
11 C.F.R. § 106.5(a)
11 C.F.R. § 106.5(a)(2)(i)
11 C.F.R. § 106.5(a)(2)(iv)
11 C.F.R. § 106.5(d)
11 C.F.R. § 106.5(g)
11 C.F.R. § 106.6
11 C.F.R. § 106.6(a)
11 C.F.R. § 106.6(a)(2)(iv)
11 C.F.R. § 106.6(e)
11 C.F.R. § 110.7(a)(4)
11 C.F.R. § 110.7(b)(1)
11 C.F.R. § 114.2(b)

INTERNAL REPORTS CHECKED: Audit documents

FEDERAL AGENCIES CHECKED: None

23-04-406-1702

I. GENERATION OF MATTER

This report concerns three matters: two audit referrals ("AR") (AR 00-06 and AR 01-03) arising from separate Commission audits and one complaint-generated matter (MUR 4932). This Office is dealing with these matters in one report because they all concern the Michigan Republican State Committee (the "Committee") and Robert M. Campau, as treasurer, and involve a similar issue from different election cycles.³

AR 00-06 was generated by an audit of the Committee undertaken in accordance with 2 U.S.C. § 438(b) which covered the period January 1, 1995, through December 31, 1996. The Commission approved the Final Audit Report on April 13, 2000, and the referral materials are attached. Attachment 1. This referral concerns the Committee's failure to allocate shared federal and non-federal expenses, payment of those expenses from non-federal accounts and improper payment and reporting of a salaried get-out-the-vote ("GOTV") program.

AR 01-03 was generated by a subsequent audit of the Committee undertaken in accordance with 2 U.S.C. § 438(b) which covered the period of January 1, 1997 through December 31, 1998. The Commission approved that Final Audit Report on February 8, 2001, and the referral is attached. Attachment 2. This referral also involved the Committee's failure to allocate shared federal and non-federal expenses and payment of those expenses from non-federal accounts.

MUR 4932 was generated by a complaint filed by Mark Brewer, Chair of the Michigan Democratic State Central Committee. The complainant alleges corporate funds were impermissibly used to finance federal election activity at a party conference.

³ Robert M. Campau is the current treasurer of the Committee. William H. Knodtke was the treasurer during the period covered by the audit referrals and the complaint in MUR 4932. The Committee filed an amended Statement of Organization listing Chris Bachelder as treasurer on March 21, 2000, and a subsequent amended Statement of Organization on April 30, 2001 listing Mr. Campau as treasurer.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. OVERVIEW**

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1 The Committee paid for shared expenses from three non-federal accounts: the Michigan
2 Republican State Committee Corporate Administrative Account ("Administrative Account"), the
3 Michigan Republican State Committee State Account ("State Account"), and the Republican
4 National Convention Account ("Convention Account"). According to the audit referrals, the
5 Committee considered the Administrative Account to be a "non-campaign account that did not
6 impact federal, state or local elections." Attachment 2 at 3; Attachment 1 at 6. The Committee
7 did not report the transactions in the Administrative Account and the account contained mainly
8 corporate contributions.⁶ *Id.* The State Account was the Committee's main non-federal
9 operating account and was used to transfer funds to the Committee's allocation account for the
10 non-federal portion of shared expenses.⁷ The Convention Account paid for shared expenses
11 related to activities at the 1996 Republican National Convention and its receipts were primarily
12 from corporations.

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16 According to the audit referrals, the Committee paid for allocable administrative expenses
17 associated with joint federal and non-federal activities, including state party conventions,
18 meetings and conferences, from these non-federal accounts. Specifically, the Committee paid

⁶ Although the state of Michigan does not permit corporate or labor union contributions to be used for non-federal elections, political party committees may accept funds from a corporation under certain circumstances for administrative expenses and certain convention expenses. See Michigan Department of State Bureau of Elections, Manual for Political Party Committees, 14, (April 1990)(allowing party committee to accept corporate funds clearly designated for administrative expenses); see also Michigan Department of State, Declaratory Ruling by Secretary of State (August 21, 1979) (allowing corporate expenditures at a political convention where none of the offices at stake are public offices and none of the resolutions to be adopted are ballot questions).

⁷ This account was referred to as the "Non-Federal Operating Account" or "Operating Account" in AR 00-06 and as the "Michigan Republican State Committee State Account" or "State Account" in AR 01-03. According to the Audit staff, it is the same account.

1 allocable expenses from the Administrative Account for the Mackinac Republican Leadership
2 Conference (the "Mackinac Conference"), the annual Michigan Republican State Convention,
3 various Committee state meetings and conferences, and several activities of the Republican
4 National Committee ("RNC") such as Republican National Committee State Chair Conferences.
5 These administrative expenses included mileage reimbursements, banquets, hotel lodging,
6 catering, entertainment, badge holders, printing, sound, lighting, and supplies. The
7 Administrative Account also paid for other allocable administrative expenses such as annual
8 audits of Committee accounts, legal expenses not directly related to a specific non-federal case,
9 federal tax preparation, salary of a Committee fundraiser, consulting fees, staff social gatherings
10 and miscellaneous expenses such as holiday cards, gifts, meetings, and delegate recruitment.

11 The other non-federal accounts paid smaller amounts of shared federal/non-federal
12 expenses. In 1995 and 1996, the State Account paid allocable expenses for reimbursements to
13 businesses for the use of telephones for a GOTV phone bank. During 1997 and 1998, the State
14 Account paid for allocable consulting fees, lighting for the state convention, GOTV phone calls,
15 and absentee voter slate pieces. In 1995 and 1996, the Convention Account paid for allocable
16 administrative expenses such as consultant fees, room deposits, travel reimbursements, hotel
17 costs for a delegate to the Convention, entertainment, catering and reception expenses, design
18 and printing costs, radio rentals, teleprompter, supplies, shipping, souvenirs and gifts, and bus
19 transportation.

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B. LAW

1. Contributions and Expenditures

The Federal Election Campaign Act of 1971, as amended, (the "Act") defines a "contribution" as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8) and 11 C.F.R. § 100.7(a). "Anything of value" includes in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

An "expenditure" is any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office; as well as a written contract, promise, or agreement to make an expenditure. 2 U.S.C. § 431(9) and 11 C.F.R. § 100.8(a).

Payment by a state party committee of the costs of voter registration and get-out-the-vote activities on behalf of the Presidential and Vice Presidential nominees of that party is not a contribution to such candidates or an expenditure for the purpose of influencing the election of such candidates provided that certain conditions are met, including that the portion of the costs allocable to federal candidates is paid from contributions subject to the limitations and prohibitions of the Act. 11 C.F.R. §§ 100.7(b)(17), 100.8(b)(18). Payment of costs incurred for

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1 the use of phone banks in connection with voter registration and get-out-the-vote activities is not
2 a contribution or an expenditure when such phone banks are operated by volunteers. 11 C.F.R.
3 §§ 100.7(b)(17)(v), 100.8(b)(18)(v). The use of paid professionals to design the phone bank
4 system, develop calling instructions and train supervisors is permissible and is not a contribution
5 or an expenditure but shall be reported as a disbursement if made by a political committee. *Id.*

6 No person shall make contributions in the aggregate to any political committee in any
7 calendar year that exceed \$5,000. 2 U.S.C. § 441a(a)(1)(C). The definition of "person" includes
8 an individual, partnership, committee, association, corporation, labor organization, or any other
9 organization or group of persons. 2 U.S.C. § 431(11). No candidate or political committee shall
10 knowingly accept any contribution or make any expenditure in violation of the limitations at
11 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

12 No multi-candidate political committee, such as a state party committee, shall make
13 contributions to any candidate and his authorized political committee with respect to any election
14 for Federal office, which in the aggregate exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A).

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2. GOTV Phone Bank Program

The auditors found that the Committee reported disbursements in November and December 1996 for a GOTV phone bank program on behalf of Republican Presidential and Vice Presidential nominees Bob Dole and Jack Kemp and three non-federal candidates. Attachment 1 at 3. The Committee reported disbursements for the phone bank as shared exempt activities totaling \$23,174, including telephone service (\$3,706) and salaries and payroll taxes (\$19,468). *Id.*; see 11 C.F.R. §§ 104.10(b)(2) and § 106.5(a)(2). The Committee provided a script used in the project; the script urged voters to vote for Bob Dole, Jack Kemp and the three non-federal candidates. Attachment 5. Although a Committee official asserted that volunteers operated the phone bank, the auditors found that 124 salaried individuals were involved in the program, and the Committee failed to provide documentation to explain the role of these individuals. Attachment 1 at 3. The auditors concluded that the disbursements made to operate the phone bank were non-exempt expenditures because the use of paid workers for GOTV phone banks voids the exemption at 11 C.F.R. § 100.8(b)(18)(v). *Id.* Thus, the auditors concluded that the Committee made either a contribution to, or an independent expenditure on behalf of, Dole/Kemp '96, Inc. ("Dole/Kemp '96"), the general election committee of Bob Dole and Jack Kemp, in the amount of \$5,794 (\$23,174 x 25%).²² *Id.* at 3.

This Office believes that these phone bank expenses do not fall within the GOTV exemption from the definitions of contribution and expenditure because it appears that paid staff operated the phone bank. See 11 C.F.R. §§ 100.7(b)(17)(v), 100.8(b)(18)(v). The script provided by the Committee, entitled "MIGOP Turnout Script #2" has a handwritten annotation,

²² The Interim Audit Report recommended that the Committee provide documentation to demonstrate that the exemption was not voided by the use of paid staff for the phone bank and that, as a result, the expenses were not contributions to Dole/Kemp '96. The Committee provided no additional information in response to the report.

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1 "Part of GOTV Program 9623 script," indicating that the phone bank's project code was "9623."
2 Attachment 5. From the disclosure report, the auditors prepared a schedule of salary payments
3 for 124 individuals reported under purpose code # 9623, indicating that they worked on the
4 phone bank. Attachment 6. The schedule also includes payments for payroll taxes as well as
5 telephone bills coded under the same project number. The evidence of salary and payroll tax
6 expenses for 124 individuals related to the phone bank, coupled with the Committee's failure to
7 explain the role of those individuals, suggests that the individuals operating the phone bank were
8 not volunteers, but salaried workers. See 11 C.F.R. §§ 100.7(b)(17)(v), 100.8(b)(18)(v). The
9 Committee has provided no evidence that all of these individuals were paid professionals who
10 designed the phone bank system, developed calling instructions and trained supervisors. See *id.*
11 Rather, it appears that these 124 salaried workers operated the phone bank; thus, the exemption
12 at 11 C.F.R. §§ 100.7(b)(17)(v), 100.8(b)(18)(v) does not apply.

13 Since the phone bank was not exempt from the definition of contribution or expenditure,
14 the Committee either made a contribution to, or an independent expenditure on behalf of,
15 Dole/Kemp '96 in the amount of \$5,794.²³ The available evidence is not sufficient to determine
16 whether the disbursements constituted an excessive in-kind contribution or an independent
17 expenditure. The phone bank script contains express advocacy on behalf of Bob Dole and Jack
18 Kemp. See 2 U.S.C. § 431(17), 11 C.F.R. § 100.16. Specifically, the script states, in part,

²³ Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall be attributed to each candidate according to the benefit reasonably expected to be derived. 11 C.F.R. § 106.1(a)(1). For a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. *Id.* Here, the script refers to Bob Dole, Jack Kemp and three non-federal candidates; thus, the proportion of space or time in the script devoted to Dole/Kemp '96 is 25% and the amount of the apparent contribution or independent expenditure is \$5,794 (\$23,174 x 25%). This amount is the same as the federal amount allocated by the Committee, although the allocation method for exempt expenditures does not apply. See 11 C.F.R. § 106.5(e).

1 "please be sure to vote for Bob Dole, Jack Kemp, _____ for state house and finally, you
2 haven't finished the page until you've voted for Brickley and Gage."²⁴ Attachment 5. Additional
3 evidence would be needed to determine whether or not the phone bank expenditures were
4 coordinated with Dole/Kemp '96. Nevertheless, the Committee had the opportunity to respond
5 to the finding in the Interim Audit Report but failed to demonstrate that the disbursements were
6 exempt or constituted an independent expenditure rather than a contribution. *Id.* at 3.

7 Based on the available information, this Office believes that the phone bank
8 disbursements should be considered an in-kind contribution of \$5,794 to Dole/Kemp '96, which
9 appears to exceed the Committee's \$5,000 contribution limitation by \$794. *See* 2 U.S.C.
10 § 441a(a)(2)(A). Further, it appears that the Committee did not properly report this in-kind
11 contribution. *See* 2 U.S.C. § 434(b)(4)(H). Therefore, this Office recommends that the
12 Commission find reason to believe that the Committee and Robert M. Campau, as treasurer,
13 violated 2 U.S.C. § 434(b)(4) and 2 U.S.C. § 441a(a)(2)(A). However, this Office believes that
14 no further action is appropriate for these apparent violations. An investigation to clarify the facts
15 and determine whether the phone bank was coordinated with Dole/Kemp '96 would require a
16 substantial investment of time and resources. In addition, only a small amount, \$794, appears to
17 exceed the contribution limitation. *See* 2 U.S.C. § 441a(a)(2)(A). Moreover, the statute of
18 limitations has expired for these violations. Therefore, in furtherance of the Commission's
19 priorities and resources, this Office recommends that the Commission take no further action
20 against the Committee and Robert M. Campau, as treasurer with respect to these violations. *See*
21 *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁴ The script also states, "[r]eports of illegal contributions and money laundering make this election more important than ever. This country can't afford another Watergate." *Id.*

1 It also appears that Dole/Kemp '96 may have knowingly received a \$5,794 in-kind
2 contribution that exceeded the limitations by \$794 and did not properly report the contribution as
3 required, *see* 2 U.S.C. §§ 434(b)(2), 441a(f); however, this Office believes no action against
4 Dole/Kemp '96 is appropriate. A Global Settlement and Release ("Global Settlement") "of all
5 repayment and enforcement matters related to Senator Robert J. Dole, Jack Kemp and their
6 authorized committees from the 1996 presidential election," approved by the Commission on
7 September 8, 2001, may bar enforcement action in this matter.²⁵ Moreover, the apparent
8 excessive amount of the contribution received by Dole/Kemp '96 was only \$794. Therefore, this
9 Office recommends that the Commission take no action against Dole/Kemp '96 with respect to
10 these potential violations.

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²⁵ The Global Settlement provided for a separate conciliation agreement with a civil penalty of \$75,000 for the enforcement actions. The conciliation agreement discussed seven outstanding enforcement matters but made no reference to any matters generated by audits of other committees. Nevertheless, it appears that the Global Settlement was intended to resolve all enforcement matters from the 1996 cycle involving Dole/Kemp '96. The agreement states that it settles "all" enforcement matters from the 1996 election and the Commission agreed to "settle and cease all actions" against the candidates and their committees and to allow them to terminate registration and reporting obligations. On January 29, 2002, the Commission approved an addendum to the Global Settlement that changed the terms of payment for stale-dated checks, but did not affect the provisions concerning enforcement actions.

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IV. RECOMMENDATIONS

- 1. Open a MUR in AR 00-06;
- 2. --

3. Find reason to believe that the Michigan Republican State Committee and Robert M. Campau, as treasurer, violated 2 U.S.C. §§ 434(b)(4) and 441a(a)(2)(A), but take no further action;

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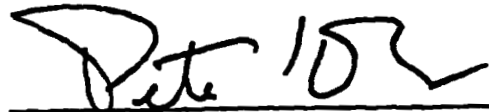
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Date


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